

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

NOV 04 2016

UNITED STATES OF AMERICA

Respondent

JOHANNES "JOHN" JARVIS

Defendant/Movant

MATTHEW J. DYKMAN

CLERK

CASE # 13-CR-02379 JB

16cv1216 JB/KK

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MEMORANDUM OF LAW AND ARGUMENT IN SUPPORT  
OF MOTION TO VACATE, SET ASIDE OR CORRECT  
SENTENCE PURSUANT TO 18 USC 2255

Johannes "John" Jarvis ("Jarvis") Defendant/Movant in the above matter respectfully files this memorandum of law and argument in support of the 2255 motion to vacate, set aside or correct the sentence.

I. STATEMENT OF FACTUAL ALLEGATIONS AND  
PROCEDURAL HISTORY

Movant was indicted 7/11/2013: Count:1-21 18:1343; Count:22 18:1349; Count:23-38 18:1957-5890. 18:1957. Defendant was sentenced to 48 months in accordance with a category II criminal history. Defendant successfully expunged a state court conviction 10/07/2016 which stated that "...for all purposes of the law, shall be deemed not to have been arrested". (See Exhibit 'A'. This motion is timely, being less than one year subsequent to sentencing.)

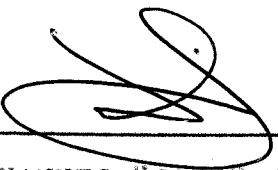
II. GROUNDS

Counsel provided ineffective assistance of counsel by not expunging the aforementioned state conviction prior to sentencing. Sentencing guideline section 4A1.2(j) clearly provides that expungement criminal history counting does not occur. This failure caused a 6 month increase

in the sentence by shifting from a category I to II.

### III. CONCLUSION AND REQUEST FOR RELIEF

In view of the above facts and argument, it is respectfully request that counsel provided constitutionally ineffective assistance of counsel in violation of Movant's Sixth Amendment rights. Movant respectfully requests the sentence be modified to 42 months.



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JOHANNES "JOHN" JARVIS - PRO SE

Federal Prison Camp

PO Box 6000

Sheridan, OR 97378-6000

CERTIFICATE OF SERVICE

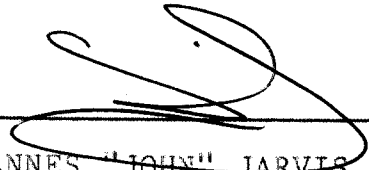
This motion and memorandum was placed in the prison mailbox system on OCTOBER 31, 2016, in accordance with the prison mailbox rule (see Houston v Lack).

To: United States District Court  
333 Lomas Blvd. NW Ste 660  
Albuquerque, NM 87192

To: United States Attorney /co  
AUSA Paige Messec  
333 Lomas Blvd. NW  
Albuquerque, NM 87102

AFFIDAVIT

I, Johannes "John" Jarvis, do hereby certify under penalty of perjury that the facts are true and correct to the best of my knowledge.



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JOHANNES "JOHN" JARVIS IN PRO SE  
Federal Prison Camp  
PO Box 6000  
Sheridan, OR 97378-6000

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF WASHINGTON

STATE OF OREGON, ) Case No.: 0131623M (DA 310321)  
 )  
Plaintiff, ) ORDER SETTING ASIDE ARREST RECORD  
 )  
vs. )  
 )  
JOHANNES JAMES JARVIS )  
 )  
Defendant )

THIS MATTER having come before the Court upon the Motion of the defendant for an Order Setting Aside all official records of this case pursuant to ORS 137.225; and the Court having reviewed the records and file herein, and now being fully advised, the Court hereby finds as follows:

1.) That the defendant was arrested as follows:

Original Arrest Date: 4/23/2013

Original Arrest Charge: THEFT THIRD DEGREE

Arresting Agency: WASHINGTON COUNTY SHERIFF

Date of Dismissal or Acquittal: 5/14/2014

2.) That positive identification of the defendant has been established as follows:

FBI Identification Number: 786046NB4

Oregon State Identification Number: 20066828

Arresting Agency Number: 13505986

- 1 - ORDER SETTING ASIDE ARREST RECORD

EXHIBIT "A"

3.) That the circumstances and behavior of the defendant since the date of arrest are found to warrant setting aside the arrest records;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendant's arrest record herein should be and the same is set aside, pursuant to ORS 137.225, and hereafter the defendant, for all purposes of the law, shall be deemed not to have been previously arrested.

IT IS FURTHER ORDERED that the Clerk of the Court shall forward a certified copy of this Order to all law enforcement agencies mentioned in the Court's file, including the following:

- a) Federal Bureau of Investigation,
- b) Oregon State Police
- c) Oregon State corrections Division,
- d) Arresting Agency.

IT IS FURTHER ORDERED that thereafter the record of arrest herein shall be sealed together with all other official records in this case, including investigation reports of the involved law enforcement agencies concerning the criminal episode.

Signed: 10/7/2016 4:46:16 PM

DATED this \_\_\_\_ day of \_\_\_\_ 20\_\_.

Circuit Court Judge

Circuit Court Judge, Andrew Erwin

Certified To Be A True And  
Correct Copy Of The Original

OCT 07 2016  
CLERK OF COURT  
TRIAL COURT ADMINISTRATOR  
Washington County

By: \_\_\_\_\_